

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P190503PC-SN	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/EP2004/003007	International filing date (day/month/year) 22.03.2004	Priority date (day/month/year) 20.03.2003
International Patent Classification (IPC) or national classification and IPC		
Applicant VOLKSWAGEN AKTIENGESELLSCHAFT		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>9</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>2</u> sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																									
<p>4. This report contains indications relating to the following items:</p> <table> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

Best Available Copy

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
 - ☐ international search (Rule 12.3 and 23.1(b))
 - ☐ publication of the international application (Rule 12.4)
 - ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
 - ☐ the international application as originally filed/furnished
 - ☒ the description:
 - pages 1-7 _____ as originally filed/furnished
 - pages* _____ received by this Authority on _____
 - pages* _____ received by this Authority on _____
 - ☒ the claims:
 - nos. _____ as originally filed/furnished
 - nos.* _____ as amended (together with any statement) under Article 19
 - nos.* 1-10 received by this Authority on 17.05.2005 with letter of 17.05.2005
 - nos.* _____ received by this Authority on _____
 - ☒ the drawings:
 - sheets 1/3-3/3 _____ as originally filed/furnished
 - sheets* _____ received by this Authority on _____
 - sheets* _____ received by this Authority on _____
 - ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
 - ☐ the description, pages _____
 - ☐ the claims, nos. _____
 - ☐ the drawings, sheets/figs _____
 - ☐ the sequence listing (*specify*): _____
 - ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - ☐ the description, pages _____
 - ☐ the claims, nos. _____
 - ☐ the drawings, sheets/figs _____
 - ☐ the sequence listing (*specify*): _____
 - ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	1-10	YES
	Claims		NO
Inventive step (IS)	Claims	7	YES
	Claims	1-6, 8-10	NO
Industrial applicability (IA)	Claims	1-10	YES
	Claims		NO
2. Citations and explanations (Rule 70.7)			
<u>This report makes reference to the following documents:</u>			
D1: DE 100 05 196 A			
D2: GB 1 592 141 A			
D3: US 6 250 7161 B			
D4: JP 10 023941 A			
D5: DE 202 04 949 U			
<p><u>Since, in the opinion of this Authority, the subject matter of claim 1 as per the main petition of 17 May 2005, which entirely corresponds to the subject matter of the claim 1 already examined in the earlier proceedings of 19 January 2001, still appears on further consideration of the submission made on 17 May 2005 to fail to meet the requirements of the PCT), this report will be concerned exclusively with the set of claims 1-10 as per the alternative petition of 17 May 2005.</u></p>			
1. Clarity			
a) In claim 1, the position of the axis of rotation relative to the two parts (16, 18) is not clearly assigned or defined by the wording "... the			

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

first part (16) and the second part (18) in their entirety ... displaceably at least about a horizontal axis of rotation... ", which thus admits of various locations. This possibility is supported by neither the description nor the drawings and is, in fact, inconsistent therewith, since the description and the drawings disclose only the possibility of fastening the second part (18) to the retaining device (12) of the head restraint to form the axis of rotation with no suggestion of another possibility.

b) The present application discloses (description and figures) frictional fastening/connection of displaceable elements of the first part (16) of the head restraint about a vertical axis of rotation and frictional fastening/connection of the second part (18) about a horizontal axis of rotation on the retaining device (12).

However, it does not disclose a first frictional connection between the first part (16) and the second part (18) (claim 3) and, additionally, a second frictional connection between the sub-elements (24, 26) of the first part (16) and the second part (18) (claim 5).

c) Owing to the wording of the present claim 1, the subject matter of claim 3 appears to be redundant.

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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2. Independent claim 1

a) D1 (for example) (see, in particular, **figures 1 and 2**) can be considered **the closest prior art** with respect to a head restraint according to the present wording of claim 1. D1 discloses a:

Head restraint (2) for a motor vehicle seat with at least one element (6) of a first part (6, 7, 6) which is displaceable in relation to a retaining device (3) of the head restraint (2), said first part being connected to a second, back part of the head restraint (2), wherein at least one element (6) of the a first part (6, 7, 6) is displaceable about at least a vertical axis of rotation and can be fixed in a frictional manner in the interior of the head restraint in the selectable displaced positions.

In D1 the retaining brackets (10) in the inner, second part of the head restraint cooperate with guides formed therein. Leg springs (12) which enclose the retaining bracket (10) and act resiliently thereon are located in the guides. The leg springs (12) also engage with individual locking grooves (11) of the retaining brackets (10) at preset displacement intervals, whereby said brackets can be fixed in a positively and a nonpositively locking manner. The intervals between the locking grooves (11) can be freely selected in the design process according to the desired adjustment. Further, in this arrangement

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
	<p>the leg spring (12) lies <u>in the region between the individual locking grooves (11), however small the region may be, against the retaining bracket (10) in a resilient manner, whereby in this more or less long transitional region the retaining bracket (10) and thus also the displaceable element (6) are retained in a frictional manner by the leg spring (12) and can thus be fixed.</u> This is the case irrespective of the effectiveness of the frictional fastening.</p> <p>b) Claim 1 differs from D1 in that the first and the second part of the head restraint are displaceable in their entirety about at least a horizontal axis of rotation and can thus be fixed in a frictional manner in the interior of the head restraint in the selectable displaced positions.</p> <p>c) The objective problem addressed by this difference is that of further improving the comfort in use of the head restraint.</p> <p>d) In light of D1 alone the solution to the problem appears to lack inventive step, since the use of a horizontal axis of rotation with a continuously adjustable, frictional connection at the upper end of the retaining device (3), which is located in the second, rear part of the head restraint (2), should be considered a very obvious feature which, simply for reasons of comfort, is most frequently applied in head restraints.</p>

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Not even an external stimulus, for example, from D2, is required to arrive at this solution.

Therefore, in light of D1 alone the subject matter of independent **claim 1** appears to **lack inventive step** and thus does not meet the requirements of PCT Article 33(3).

e) Further head restraints showing the various adjustment possibilities about the vertical and the horizontal axes of rotation are known from D3 (see, for example, constant torque hinge 34, 38) and D4, in which the hinges themselves should be considered to function in a frictional manner.

3. Dependent claims 2-10

3.1 Dependent claims 2-6 and 8-10 do not contain any features which, in combination with the features of any claim to which they refer back, meet the PCT requirements for inventive step. The reasons are:

a) The additional features of dependent **claims 8 and 10** are known from D2; the additional features of **claims 2 (implicitly) and 4** are known from D1.

b) The additional features of dependent **claims 3, 5, 6 and 9** appear to be self-evident from D1 or D2 alone or from the combination of D1 and D2.

In D2, for example, connecting the second part (1)

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
	<p>to the first part (2) at least in a frictional manner is self-evident. The parts inserted in each other (see, for example, figure 3) are at least partly retained in a frictional manner and are additionally secured by hooks, although this is technically not necessary. As already discussed above, in D1 the retaining brackets (10) cooperate in the rear, second part of the head restraint with guides formed therein, in which at least in a smooth region between the individual locking grooves (11) of the retaining brackets (10) the leg spring (12) produces frictional fastening. The substitution therefor of a purely frictional connection, as is routinely done in many head restraint adjusting systems, is self-evident. Therefore, the features in question are only such that a person skilled in the art routinely applies on the basis of familiar considerations, especially since the resulting advantages are readily foreseeable.</p> <p>3.2 Dependent claim 7 appears to contain novel and inventive features which are not suggested by the available prior art.</p> <p>4. Contrary to PCT Rule 5.1(a)(ii), the description does not cite D1-D4 or indicate the relevant prior art disclosed therein.</p>

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Box No. VI **Certain documents cited**

1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
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Pursuant to PCT Rules 64.3 and 70.10, attention is called to D5, which has a publication date of 17 July 2003 and a filing date of 27 March 2002.

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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